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Supreme Court, U.S.
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Docket No._____

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1999

EUGENE C. AZAMBER
Petitioner

v.

FRANCHISE TAX BOARD
Respondent

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Eugene C. Azamber
4664 West Hammond Avenue
Fresno, California, 93722
(559) 442-4600,Ext. 8491
Appellant in Pro Per

6 cpp

QUESTIONS PRESENTED FOR REVIEW

1. Question: Can a state taxing agency deliberately ignore their own tax codes that requires them to examine and assess any additional taxes as soon as practicable after the tax return is filed and then assess taxes without a state audit six(6) years later?

2. Question: Can a State taxing agency ignore a definite Statute of Limitations and assess additional taxes without any state audit six(6) years after the tax return was filed when the Statute of Limitations ran out in four(4) years?

3. Question: Can a State taxing agency circumvent the Bankruptcy protection afforded to a taxpayer by claiming that a taxpayer must report any IRS proposed assessment when the proposed IRS assessment was in dispute with the IRS and the disputed amount of IRS taxes had not become a FINAL DETERMINATION by the IRS as required by the State taxing code?

4. May the State taxing agency dispute the discharge of a Chapter 7 Bankruptcy, when they were properly listed as a creditor and failed to object to the discharge of the State taxes as required under the Bankruptcy Statute?

5. May a State Taxing Agency ignore the requirements of their own Revenue Code that provides an appeal process and deliberately circumvent this appeal process by failure to examine and assess any additional taxes as provided under their Revenue Codes and therefore; violate both the U. S. Constitutional and California State Constitutional provisions of Equal Protection and Due Process?

6. Can a Bankruptcy Judge totally ignore the silence of a State Taxiing Agency for over five(5) years in NOT OBJECTING to a payment plan that DID NOT GIVE THEM ANY PAYMENT for their claim that had been filed nor had the State raised the issue that a previous Chapter 7 Bankruptcy HAD NOT discharged the tax claim for the same tax years.

7. Can a State Taxing Agency ignore the basic principles of the Doctrine of Laches to take advantage of a taxpayer by silence and failure to abide by their own Revenue Codes?

8. When Judicial Malice, Bias, Prejudice and Negligence are indicated; should the debtor in Bankruptcy be bound when the decision was not based on a neutral position of the Bankruptcy Judge?

9. If the Chapter 7 Bankruptcy Judge in error stated that the Chapter 7 Bankruptcy discharge was October 15,1990 when the code requires a six(6) month period and the true date of discharge should have been November 30, 1990 can the Appellant use November 30, 1990 as the true date of the Chapter 7 Bankruptcy Discharge?

10. Can the Circuit Court of Appeals deny "Due Process and Equal protection" by denying the PETITION FOR A RE-HEARING and MOTION FOR STAY OF MANDATE OF JUDGMENT PENDING THE FILING OF A WRIT OF CERTORARI TO THE SUPREME COURT when there is evidence of error in judgment and failure to review all the issues that were presented by Appellant?

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E California Revenue & Taxation Statutes; 5th and 14th Amendments of the U. S. Constitution; Article 1,Sec 7(a) and Sec. 7(b) of the California State Constitution; Definitions of "Practicable", "Laches", "Waiver".

F Formal protest of a specific U. S. District Court Judge hearing Appellant's case in District Court.

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OCTOBER TERM, 1999

EUGENE C. AZAMBER
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v.

FRANCHISE TAX BOARD
Respondent

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Eugene c. Azamber, Appellant in Pro Per hereby petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

OPINIONS BELOW

The opinion of the Court of Appeals is unpublished and is reprinted at Appendix C. It affirmed the decision of the United States District Court, Eastern District of California, No.CV F 97-5291 AWI and is reprinted at Appendix D.

JURISDICTION

The Court of Appeals entered judgment on December 16, 1998. Petitioner invoke the jurisdiction of this Court pursuant to 28 U. S. C. 1254(1). Federal Jurisdiction in the District Court was asserted under Title 31 U. S. C. 3729, et seq. The date on which the United states Court of Appeals decided my case was December 16, 1998. A timely petition for rehearing was filed and was denied on February 18, 1999. And a copy of the order denying rehearing appears at Appendix B.

STATUTES INVOLVED

California State Revenue and Taxation Statutes,5th and 14th Amendments under the United States Constitution and California State Constitution Article 1, Sec 7(a) and Sec 7(b) and are reprinted in Appendix E.

IMPORTANCE OF CASE

THE CALIFORNIA STATE FRANCHISE TAX BOARD,AN INCOME TAXING AGENCY, DELIBERTLY IGNORES THE TAX STATUTE THAT REQUIRES THEM TO DO THEIR OWN AUDITING AND ASSESSING AND ALSO THE REQUIREMENTS OF THE FOUR (4)YEAR STATUTE OF LIMITATIONS THAT REQUIRES SUCH ASSESSMENT WITHIN THE FOUR(4) YEAR PERIOD. BY DOING SO THEY ARE ABLE TO AVOID ALLOWING THE TAXPAYER ANY OF THE APPEALS THAT ARE ALLOWED UNDER THE STATE INCOME TAX CODE. THEY ALSO ATTEMPT TO CIRCUMVENT THE PROTECTION PROVIDED TO ANY TAX PAYER THAT FILES BANKRUPTCY BY ATTEMPTING TO ASSESS ANY ALLEGED ADDITIONAL TAXES AFTER THE DIS-CHARGE OF THEIR STATE TAXES IN THE BANKRUPTCY COURT. IN ADDITION, MANY OF THE STATE TAXES THAT THEY CLAIM ARE BASED ON

INACTURATE AMOUNTS CLAIMED BY THE IRS SINCE THEY DID NOT CONDUCT THEIR OWN STATE AUDITS. THE ACTIONS OF THE CALIFORNIA FRANCHISE TAX BOARD CAN AFFECT ALL INCOME TAXPAYERS WITHIN THE STATE OF CALIFORNIA THAT ARE SUBJECT TO AN AUDIT OR WHO MAY FILE BANKRUPTCY AND THIS CAN REPRESENT MILLIONS OF PEOPLE. IT CAN ALSO AFFECT TAXPAYERS IN OTHER STATES THAT HAVE STATE TAXING AGENCIES THAT ATTEMPT TO CIRCUMVENT THEIR OWN TAX CODES AND THE BASIC PROTECTION OF THE BANKRUPTCY LAW.

Statement of the Case

Appellant filed a Chapter 7 Bankruptcy on May 30,1990 and properly listed the Internal Revenue Service and California Franchise Tax Board for the tax years of 1983, 1984, 1985, and 1986. The taxes for these years was discharged by the Chapter 7 Bankruptcy on October 15, 1990. Because of a IRS lien that had been filed on Appellant's property, a Chapter 13 Bankruptcy was filed on February 15, 1991. The FTB filed a non-priority claim for the same state taxes that had been discharged by the Chapter 7 Bankruptcy. The taxes for the IRS had been disputed and an appeal made from the beginning but due to the IRS tax lien a payment plan was entered into to keep the IRS from taking Appellant's property on April 26, 1994. The plan had "Zero" payment to the FTB and Appellant completed payments under the plan but to clear off the FTB claim an "Objection to the FTB Claim" was filed and this was the first time that the FTB made any objection to the payment plan or the fact that their claim had been discharged by the Chapter 7 Bankruptcy on October 15, 1990. The FTB had always been noticed under both Bankruptcies and for over five(5) years remained deliberately "Silent" about their claim or that they were to receive nothing under the Chapter 13 and discharged under the Chapter 7 Bankruptcies. The FTB ignored their own Revenue Codes that requires them to do their own auditing, allow appeals for taxpayers, ignored the required Statute of Limitations in order to deny Appellant the Constitutional protection under "Due Process" and "Equal Protection" under both the U.S. Constitution 14th Amendment and California Constitution Article 1,Sec7(a) and "Sec 7(b) "Privileges and Immunities" and thus deny to the Appellant a "Discharge" under the

Chapter 13 Bankruptcy by filing and making an invalid claim for taxes under said Chapter 13 Bankruptcy. This has been the basis for Appellant's appeal from the Bankruptcy Court through the Ninth Circuit Court of Appeals in San Francisco.

All code sections cited refer to California Revenue and Taxation Codes unless otherwise noted; FTB means the California Franchise Tax Board: IRS means the Internal Revenue Service. All Exhibits are found in the Excerpt of Record as originally filed with the California District Court or in the Appendix under separate cover.

1. Question: Can a state taxing agency deliberately ignore their own tax codes that requires them to examine and assess any additional taxes as soon as practicable after the tax return is filed and then assess taxes without a state audit six(6) years later?

Judicial deliberate ignoring, Misinterpreting or Non application of California Revenue and Taxation Code 19032,Appendix E & E(1), which creates a MANDATORY OBLIGATION-NOT A PERMISSIVE OBLIGATION, on the FTB to EXAMINE and DETERMINE any additional taxes AS SOON AS PRACTICABLE after the return is filed by the taxpayer. This code section is very definite as it states "As soon as PRACTICABLE,Appendix E(4)&(5) after the return is filed, the Franchise Tax Board SHALL EXAMINE it and SHALL DETERMINE the correct amount of tax" The use of the word SHALL is not permissive but mandatory. PRACTICABLE is not an indefinite period but must be reasonable and surely a year or at the most two years after the return is filed would be stretching this requirement, but in any case, it could not be any longer than the FOUR YEAR STATUTE OF LIMIT-ATIONS of tax code section 19057(A), Appendix E. Rev-enue Code 19032 has NO EXTENSION OR EXCLUSION for bankruptcy. Code Section 19032 requires the FTB to deter-mine the additional taxes within the four years of tax code 19057(A).The Appeal court is therefore asked to determine that the failure of the FTB to EXAMINE and DETERMINE any additional taxes for the years 1983, 1984,1985 and 1986 as required by Tax Code 19032 within the four year period of - tax code 19057(A) is considered to be an acceptance by the FTB of the tax returns as filed for the above years and that no additional taxes were due because of the intentional failure to examine

said returns to comply with Tax Code Section 19032 as required by law and that the right to assess any additional taxes for the above years was thereby waived by the FTB. If the court finds for debtor on this issue, then the question of the discharge by the Chapter 7 bankruptcy would not at issue. It is obvious why Code Section 19032 has the mandatory requirements on the part of the FTB, so that the taxpayer will have an opportunity to appeal any assessment as discussed in ISSUE NO. 5 and should a mistake have been made during any tax return, that same mistake could be avoided in future years. This code section 19032 has no option that allows the FTB to wait for any IRS audit, but is very specific as to requiring the FTB to perform their own audits.

2. Question: Can a State taxing agency ignore a definite Statute of Limitations and assess additional taxes without any state audit six(6) years after the tax return was filed when the Statute of Limitations ran out in four(4) years?

Revenue and Taxation Code Section 19057(a),Appendix E states...."every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four year period".... The four years for 1983 ran on April 15,1987; 1984 on April 15, 1988; 1985 on April 15,1989 and 1986 on April15,1990. The FTB did not assess any additional taxes until December 26, 1990 and did not have any additional time for assessment as discussed below in Code Section 19059 and ISSUE NO.2 The Appeal court is asked to find that the FOUR YEAR STATUTE OF LIMITATIONS had run out for the tax years 1983,1984,1985 and 1986 and that the subsequent assessment of additional taxes by the FTB was not valid.

3. Question: Can a State taxing agency circumvent the Bankruptcy protection afforded to a taxpayer by claiming that a taxpayer must report any IRS proposed assessment when the proposed IRS assessment was in dispute with the IRS and the disputed amount of IRS taxes had not become a FINAL DETERMINATION by the IRS as required by the State taxing code?

Revenue and Taxation Code Section 19059, Appendix E states that the taxpayer is required to report a change..... ONLY AFTER THE FINAL FEDERAL DETERMINATION..... and this Code Section 19059 is very specific that the notice must be given to the FTB ONLY AFTER the FINAL DETERMINATION OF ADDITIONAL FEDERAL TAXES. The FINAL DETERMINATION OF additional IRS taxes did not take place until APRIL 26, 1994,see Exhibit"B" and May 9, 1994 letter from Emily Kingston, IRS counsel Exhibit"C". The bankruptcy judge was aware of this STIPULATED AGREEMENT with the IRS as this was the basis of the CONFIRMED PLAN, Exhibit"D". Since there was NO REQUIREMENT for debtor to report any change to the FTB prior to April 26,1994,date of the FINAL IRS DETERMINATION, then the provisions of code section 19057(A) apply and the maximum FOUR YEAR STATUTE OF LIMITATIONS of this code section apply and render the FTB tax claim invalid for the tax years in question. In other words, the FTB DID NOT HAVE ANY ADDITIONAL TIME beyond the four years of Section 19057 for failure of the taxpayer to report any change as there WAS NOTHING TO REPORT PRIOR TO THE FINAL IRS DETERMINATION, that was on April 26,1994. Judicial deliberate misinterpretating of Calif. Rev. and Tax Code Section 19059,Appendix E, as requiring an APPEAL, which is clearly INCORRECT as there is nothing in this code section that requires an APPEAL, but the wording is clearly FINAL FEDERAL DETERMINATION, so the Judge's ignoring the requirements of this code section was very clearly in error and the Judge should have ruled that the FTB only had a four year period under Section 19057 to assess any additional taxes as discussed under the previous issue. In addition, when the debtor offered to show that there had been an appeal, the Judge refused to allow debtor to enter evidence(see transcript of hearing on objection, Exhibit"U", which then allowed the Judge to ignore this code section in his ruling in order to favor the FTB position. The Judge also gave the FULL AMOUNT of the FTB claim, even though he had the letter of Donna Webb, FTB dated February 28, 1996, as Exhibit"E", which HAD CLEARLY STATED that the FTB was REDUCING THEIR CLAIM FOR THE ABOVE TAX YEARS IN QUESTION and readjusting 1986 and dropping the claim for 1987. See also the letter of Robert D. Milam, dated November 25,1996 Exhibit"V". Yet, despite this information, the Judge GAVE THE FULL AMOUNT OF THE FTB CLAIM,

which also further indicates the bias that this Judge has with regard to the debtor and the objection to claim of FTB filed by debtor.

In addition, the Bankruptcy Judge deliberately mis-interpreted the amount under dispute with the IRS as property value (See transcript of objection hearing)Exhibit"U" and not correctly as to the tax amounts due to the IRS under the stipulated agreement with the IRS. See December 19, 1993 letter of Emily J. Kingston, IRS District Counsel, Exhibit"F"; Stipulation RE Objection to IRS claim, dated April 26, 1994, Exhibit"B" and Emily J. Kingston, IRS District counsel letter dated May 9,1994,Exhibit"C". The Judge HAD ALL OF THESE in his file, which CLEARLY INDICATE THE AMOUNT IN DISPUTE WAS OVER THE TAXES for the years in question and NOT OVER PROPERTY VALUES as the Judge stated. It becomes obvious that the Judge ruled this way in order to try to deny that there was an appeal with the IRS and to avoid the defense of Debtor by Calif Rev & Tax Code 19059 as described above.

4. May the State taxing agency dispute the discharge of a Chapter 7 Bankruptcy, when they were properly listed as a creditor and failed to object to the discharge of the State taxes as required under the Bankruptcy Statute?

There was an erroneous and deliberate denial that a prior Chapter 7 Bankruptcy did discharge the State tax years in question. Debtor had filed a Chapter 7 Bankruptcy on May 31, 1990, which specifically listed both the taxes of the IRS and also listed the tax years in question of the FTB. The FTB was properly noticed and filed no objections within the 60 days required by Bankruptcy Code 727. Because the FTB only had the four years under Code Section 19057 to assess any additional taxes as discussed in detail in above and their failure to file an assessment within the 240 days prior to the filing of the Chapter 7 Bankruptcy, THEY HAD NO PRIORITY CLAIM and the taxes were discharged on October 15, 1990. See Exhibit"G" entitled "Declaration of Eugene C. Azamber in support of objection to claim of Franchise Tax Board" filed October 25, 1995 with all exhibits. The appeals court is asked to rule that the FTB taxes for the years in question were discharged by Chapter 7 Bankruptcy for the reasons stated above and that the deliberate silence

on the part of the FTB with regard to the Chapter 7 Bankruptcy be deemed to have been an acceptance of said discharge. See the Jan 28,1991 letter of Michael W. Stelzer, Attorney at Law, to the FTB stating that their claim was discharged and to which the FTB never responded to deny the fact that these FTB taxes were discharged. See Exhibit"H".

5. May a State Taxing Agency ignore the requirements of their own Revenue Code that provides an appeal process and deliberately circumvent this appeal process by failure to examine and assess any additional taxes as provided under their Revenue Codes and therefore; violate both the U. S. Constitutional and California State Constitutional provisions of Equal Protection and Due Process?

Judicial failure to acknowledge the "Due Process" and "Equal Protection" violations by the Franchise Tax Board failure to comply with the requirements of CAlif. Rev. and Tax Code Sections: 19032, 19O33, 19O34, 19O41, 19O44, 19O45, 19O46,19O47 and 19O48, Appendix E(1) & E(2), as they pertain to taxpayer notice and appeal rights. These code sections are very clear and self-explanatory. The FTB by waiting for almost six(6) years to attempt to assess additional taxes clearly violated the "Due Process" and "Equal Protection" U. S. Constitution Fourteenth Amendment and California Con-stitution Article 1,Sec. 7(a) and also Calif. Constitution Art.1, Sec 7(b), "Privileges and Immunities", Appendix E(3). Calif. Rev. & Tax Code Section 19032 has already been discussed in detail above; Sec.19034, Appendix E & E(1) REQUIRES A DETAIL-ED BREAKDOWN of the proposed increased assessment --NONE WAS EVER GIVEN, all debtor ever had was the First Notice of Taxes Due, dated December 26, 1990, Exhibit"M", which only gave the totals, BUT NO DETAILS as to the basis of the assessment. The first detailed tax breakdown was in August 8,1996,in the FTB response to objection filed by debtor, which clearly violates the 19034 code section of proper notice. The other code sections listed above have a regular procedure for appeal after proper assessment and notice by the FTB, but none was ever given due to the delay in assessment as discussed above. This delay prejudiced the debtor's rights, as no appeal was ever allowed. If the FTB had assessed as required under Code Section 19032, then

there would have been adequate time for the debtor to appeal. In fact, there doesn't appear to be any audit by the FTB but merely, taking the figures of the IRS, which were in error, as evidenced by the STIPULATED AGREEMENT WITH THE IRS, dated April 26,1994 Exhibit"B". The taxpayer is only required to maintain records for a three(3) year period after filing, so by waiting for six(6) years, the FTB made sure that there could be NO ADEQUATE APPEAL and further NO RIGHT OF APPEAL was ever offered debtor. CAlifornia Constitution, Article 1, Sec.7(b), Appendix E(3) that has to do with "Privileges and Immunities" is violated when the period for the FTB to assess is extended against the taxpayer who has filed bankruptcy, while the taxpayer who doesn't file bankruptcy has the benefit of the four(4) year statute of Calif. Rev. & Tax Code Section 19057(a) as protection from additional assessments. This very clearly gives both a PRIVILEGE AND IMMUNITY to one class of taxpayer and not the other. There should be no difference in their treatment under the same state income tax.

If the FTB had followed the tax code sections discussed above related to assessment and appeal and also had they complied with the time elements required under these sections, then there would be no need to try to make a difference in the fact that one taxpayer files for bankruptcy protection and the other did not when the STATUTE OF LIMITATIONS OF FOUR(4) YEARS HAD RUN ON BOTH OF the taxpayers. Again, this is very clearly a PRIVILEGE AND IMMUNITY for the one who does not file a Bankruptcy and also a CLEAR VIOLATION of the EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT AND CALIFORNIA CONSTITUTION, ART 1, SECTION 7(a). EQUAL PROTECTION, Appendix E(3).

Appellant asks the appeals court to rule that the violation of the ABOVE TAX CODE SECTIONS and the protection of both the Federal and State Constitutions, invalidate the FTB claim for additional taxes as they were wrongfully assessed as a result of the violations of the constitutional rights of the debtor. The actions of the FTB affect all California taxpayers and act to deny appeal rights and to circumvent all of the protection of the Bankruptcy Laws.

6. Can a Bankruptcy Judge totally ignore the silence of a State Taxiing Agency for over five(5) years in NOT OBJECTING to a payment plan that DID NOT GIVE THEM ANY PAYMENT for their claim that had been filed nor had the State raised the issue that a previous Chapter 7 Bankruptcy HAD NOT discharged the tax claim for the same tax years.

Judicial failure to acknowledge that all during the five(5) year period of the Chapter 13 Bankruptcy that there had obviously been a very DELIBERATE silence on the part of the FTB as to their claim, which was filed as NON-PRIORITY and under the confirmed payment plan they were to receive NOTHING, said payment plan being approved by the Bankruptcy Judge on June 28,1994.The history of this case shows that the FTB had knowledge of the proposed assessment by the IRS on September 9,1988,see declaration of Gail Miller, FTB, dated December 9, 1996, Exhibit"L" and yet the FTB chose to wait over two(2) years before making an assessment on Dec.26, 1990, Exhibit"M", which was over two(2) months after the Chapter 7 Bankruptcy Discharge became final on October 15, 1990,Exhibit"G", said discharge included the FTB claim for the years in question. Note also the letter of attorney Mike Stelzer, to the FTB dated January 28,1991, Exhibit "H" . The FTB never responded to this letter advising them that their claim had been discharged by the Chapter 7 Bankruptcy. The Chapter 13 Bankruptcy was filed because of an IRS lien on the debtor's house in which they were threatening to take the house. The FTB claim was always considered to have been discharged by the Chapter 7 Bankruptcy, see letter of M. Nelson Enmark, Chapter 13 Trustee, dated November 15, 1994 to Mike Stelzer, with attachments, Exhibit"N". The only correspondence from the FTB following their filing of their claim for the 1983,1984, and 1985 taxes was when they filed the additional claim for 1986 and 1987,attached to Nelson Enmark's letter of November 15, 1994, Exhibit"N". The FTB taxes for 1983,1984 and 1985 were always listed as "FORGIVEN" in each of the trustee statements see Exhibit"O" and were ALWAYS listed to RECEIVE NOTHING in all of the proposed and confirmed payment plans of the Chapter 13 Bankruptcy. The FTB was always PROPERLY NOTICED as to the fact that they were to RECEIVE NOTHING and they were deliberately SILENT as to any objection to receive NOTHING for the tax years in question. It was only when debtor filed the October 25, 1995

Objection to the claim of the FTB to clear up the record that they raised the issue about the Chapter 7 Bankruptcy discharge. In addition, their deliberate act of waiting for six(6) years to make assessments not only denied debtor the right to the appeal process as described in Code Sections above but also allowed the FTB to deliberately allow the penalties, interest, etc. to accumulate to their advantage, that would have been avoided had the tax return been examined as required by Code Section 19032 and any proposed assessments made at that time. The appeal process then could have been taken by taxpayer and a final determination as to the actual amount of taxes, if any were due, not just an arbitrary assessment, without any legal basis. If the legislature had intended the FTB to rely on the IRS to do their auditing then they would have so stated, instead Code Section 19032 is clear that this is the ABSOLUTE BURDEN OF THE FTB and also the legislature provided the APPEAL PROCESS of any FTB ASSESSMENT as discussed above but this was Knowingly and intentionally denied to debtor by the FTB actions in this case.

7. Can a State Taxing Agency ignore the basic principles of the Doctrine of Laches to take advantage of a taxpayer by silence and failure to abide by their own Revenue Codes?

In addition to trying to circumvent the protection of the Chapter 7 Bankruptcy as discussed in detail above, which directly violates the constitutional protection provided to Debtor under both Federal and State Constitutional laws. Also California Civil Code Section 3527, DOCTRINE OF LACHES,Appendix E(5) & E(6), very clearly applies in this case as their deliberate and intentional delay both as to the filing of their assessment for over two(2) years after notice from the IRS and No notice or objection for over a five(5) year period that they were to receive NOTHING under the Chapter 13 Bankruptcy confirmed payment plan. Their deliberate and intentional silence and delay has cause an irreprable bias to the debtor's discharge of the Chapter 13 Bankruptcy, which debtor has paid in full under the confirmed plan and debtor clearly expected that there would be a discharged as to all the valid claims filed in said Chapter 13 Bankruptcy. The DOCTRINE OF LACHES states that when the claimant by their actions have caused a bias or prejudice to the position of the defendant, then the claimant is barred

by their intentional delay from pursuing any claim against the defendant. The silence and deliberate non-actions of the FTB clearly fall within the intent and meaning and purpose of the DOCTRINE OF LACHES that would bar the FTB claim as to the tax years in question.

Lastly, the FTB did not file their assessment within the 240 days of the filing of the Chapter 7 Bankruptcy, filed May 31, 1990 as required under the Bankruptcy statutes in order to have a valid claim, including a priority claim. The appeals court is asked to find that the failure of the FTB to respond to notices from the Chapter 7 Bankruptcy court acknowledge the discharge of their taxes as listed with the Bankruptcy court on October 15, 1990. Further, that the FTB failure to object during the five(5) year period in which they were listed to receive NOTHING under their Chapter 13 Bankruptcy filing, was an acceptance that their claim was invalid and that their deliberate silence and delay has biased the discharge of the debtor's Chapter 13 Bankruptcy and also that the DOCTRINE OF LACHES bars the FTB from their claim based on their deliberate acts and inaction in this case.

8. When Judicial Malice, Bias, Prejudice and Negligence are indicated; should the debtor in Bankruptcy be bound when the decision was not based on a neutral position of the Bankruptcy Judge?

Judicial Malice, Bias, Prejudice, and Negligence in handling of the Chapter 13 Bankruptcy case of the Debtor by the Bankruptcy Judge by allowing this case to go for over five(5) years without ever questioning the validity of the claim of the FTB and allowing the debtor to believe that the court had accepted the Chapter 7 Bankruptcy as discharging the FTB taxes for the years in question. The Judge further approving of "Zero" payment to the FTB claims in the confirmed payment plan of June 28, 1994, further verified the belief that the court acceptance of the Chapter 7 Bankruptcy discharge of October 15, 1990, as having discharged the FTB claims as listed in the Chapter 13 Bankruptcy.

The Judge has shown Malice, Bias, and Prejudice, against the debtor from the very beginning of the Chapter 13 Bankruptcy case, in that the first comment from the Judge, at the first meeting with the Judge, was to the effect that Debtor

had come from a Chapter 7 Bankruptcy because of taxes, and indicated his displeasure at this. In the next five(5) or more meetings with the Judge to try to get the STIPULATED AGREEMENT with the IRS confirmed, the Judge always made the comment that "Debtor's religious contributions were too high and that Debtor should pay his debts!". The amount of Debtor's religious contributions had nothing to do with the STIPULATED AGREEMENT WITH THE IRS, as there was money available to pay the amount of the agreement. Despite the fact that the IRS had agreed to "Zero" payment on the IRS unsecured claim, see letter of Emily J. Kingston,IRS District counsel, dated December 19,1993, Exhibit"F"and also her letter of May 9, 1994, Exhibit"C" and the Stipulation RE Objection to IRS claim, dated April 26, 1994, Exhibit"B". The Judge refused to accept this agreement and insisted that since the religious contributions were so high(in his opinion), he forced Debtor to a 50 percent agreement for the unsecured claims in the confirmed plan of June 28, 1994. At this meeting, the Judge asked the trustee, M. Nelson Enmark, if there was enough money available, and the trustee replied that their was and that it was based on the STIPULATED AGREEMENT, to which the Judge replied that he remembered the AGREEMENT and CONFIRMED THE PLAN at that time.

Debtor's first attorney, Michael Stelzer, moved from Fresno and so Debtor retained Roderick Jarrett and when Mr. Jarrett did not wish to continue the Objection to the FTB claim, Debtor became "IN PRO PER", which seemed to irritate the Bankruptcy Judge even more. There were at least five(5) or more meetings on the Objections to the FTB claim, the last three(3) or more were delayed by the Judge not being ready, his research clerk being ill, etc. It is questionable if the Judge ever really reviewed any of the file on the objection, As none of the Calif. Rev. and Tax Code Sections that were quoted as the basis of Debtor's objection to the claim of the FTB were ever commented on or discussed by the Judge. See Declaration of Eugene C. Azamber Objection to FTB claim dated October 25, 1995, Exhibit"G";Declaration of Eugene Azamber in support of Objection to claim of FTB,Dated Aug 30,1996,Exhibit"Q";Response to August 8, 1996 opposition filed by FTB, dated August 14, 1996, and Exhibit"R";Supplemental Declaration in support of objection to claim of FTB, Dated December 9, 1996 hearing Exhibit"S".

In addition, see letter to Judge Brett Dorian dated January 2, 1997, Exhibit"T". In fact, it is clear that the Judge was not neutral as he should have been in this case and that his Malice, Bias, and Prejudice was evident at all stages(See transcript of the Objection Hearing as a reflection of the Judge's attitude toward the Debtor)Exhibit"U". It can only be concluded that the Judge was either negligent in allowing the case to go for five(5) years without questioning the validity of the FTB claim; since the FTB was always listed to have received NOTHING according to the plan that the Judge had approved and then after the deliberate silence of the FTB for over five(5) years to allow the FTB to raise the issue about the Chapter 7 discharge and thus put the Debtor in the position of not having enough time in the plan to provide for the FTB, even if their claim were valid, WHICH IT IS NOT, for the reasons discussed in detail in the foregoing paragraphs and OTHERS previously discussed or the MALICE and refusal to remain neutral that has caused bias to Debtor's position and thus force a dismissal of Debtor's Chapter 13 Bankruptcy that would lose all protection of the Bankruptcy laws that Debtor was entitled to under the U. S. Constitution.

The Judge in overruling the objection of the Debtor and especially in completely ignoring all the evidence and Tax Code Sections presented by debtor, has obviously indicated his bias and prejudice to cover up for the failure to properly handle this case during the over eight(8) years that it has run. The appeals court is asked to find that the actions of the Bankruptcy Judge in overruling the Objections of Debtor were not based on proper legal grounds and that the decision of the Judge be reversed and the claim of the FTB be denied.

9. If the Chapter 7 Bankruptcy Judge in error stated that the Chapter 7 Bankruptcy discharge was October 15,1990 when the code requires a six(6) month period and the true date of discharge should have been November 30, 1990 can the Appellant use November 30, 1990 as the true date of the Chapter 7 Bankruptcy Discharge?

The Chapter 7 Bankruptcy Judge in error gave a discharge date that was a month and a half before the date required under the Bankruptcy Code and therefore, Appellant seeks to have the Appeals Court rule that the true date was that of

November 30, 1990. One of the claims of the FTB is that their assessed taxes were final five(5) days after the stated discharge of the Chapter 7 Bankruptcy on October 15 and thus not discharged in Bankruptcy Court order of October 15, 1990 but if they had been assessed as final within the period prior to discharge then the Chapter 7 Bankruptcy would have discharged their taxes. Appellant requests that the Appeals Court rule that the proper date of discharge was November 30,1990 as it should have been and that the FTB taxes were not assessed after the Chapter 7 Bankruptcy Discharge.

10. Can the Circuit Court of Appeals deny "Due Process and Equal protection" by denying the PETITION FOR A RE-HEARING and MOTION FOR STAY OF MANDATE OF JUDGMENT PENDING THE FILING OF A WRIT OF CERTORARI TO THE SUPREME COURT when there is evidence of error in judgment and failure to review all the issues that were presented by Appellant?

The Ninth Circuit Court of Appeals refused a re-hearing on February 18,1999 ,after a Petition for Re-Hearing was filed December 28,1998 following the decision by Judges Browning, Trott, and Silverman on December 16, 1998. A Motion for Stay of Mandate of Judgment Pending the filing of Writ of Certorari with the United States Supreme Court was filed on February 22, 1999. The Ninth Circuit Court of Appeals ignored the Motion to Stay and notified the U. S. District Court, Eastern District, Fresno, California of the December 16, 1998 judgment in violation of the Motion for Stay Pending the filing of the writ of Certorari. All Petitions and Motions were filed within the time allowed and were all properly noticed to all parties. See Appendix A & A(1) . This is a direct denial of the "Due Process and Equal Protection" provisions of the 5th amendment and 14th amendment of the United States Constitution. This denial of "Due Process" is further evidence by the statement in the Denial of the Re-Hearing that "THERE WOULD BE NO FURTHER FILINGS IN THIS CASE". The Statutes allows for the filing of a MOTION TO STAY THE MANDATE OF JUDGMENT and the United States Constitution guarantees this under the 5th and the 14th Amendments. The Circuit Court has shown Malice and Bias in denying a Re-hearing and then the Stay of Judgment when it was apparent that the decision of the

Judges was erroneous and that the Judges never ruled on all the issues that had been presented by the Appellant.
The U. S. Supreme Court is asked to overturn the decision of the Ninth Circuit Court of Appeals based on Judicial error, bias, malice, and prejudice against an Appellant who files in the Pro Per status and because Appellant has properly provided the evidence that the decision should have been in the favor of the Appellant had it not been for the bias of the Bankruptcy and District Court Judges who deliberately overlooked the law and Statutes that the Franchise Tax Board failed to comply with in this case and had they complied with their own tax statutes, this case would never have gone to appeal but would have been properly decided by the Bankruptcy Judge had he also followed the requirements of the tax statutes as they were required to be complied with by the Franchise Tax Board and had he further acknowledged that the Franchise Tax Board taxes were discharged by the Appellant's Chapter 7 Bankruptcy that did indeed discharge these taxes as shown by the Appellant's evidence.

SUMMARY

The Appeals court is requested to reverse the decision of the Bankruptcy Judge in Overruling Debtor's Objections to the claim of the Franchise Tax Board and to deny the claim of the Franchise Tax Board for the following reasons:

1. The FTB deliberately failed to follow the specific requirements of Calif. Rev.Tax Code Section 19032, which is to EXAMINE and DETERMINE any ADDITIONAL TAXES as soon as PRACTICABLE after the tax return is filed for the year. The law DOES NOT GIVE the FTB an OPTION TO WAIT for an IRS audit, but is SPECIFIC that the FTB is to EXAMINE and DETERMINE their own taxes. The court is asked to rule that the FTB DID NOT COMPLY WITH THE TAX LAW and therefore, that the FTB ACCEPTED THE AMOUNTS on the tax returns AS FILED and WAIVED ALL RIGHTS TO ASSESS ANY ADDITIONAL TAXES for the 1983,1984,1985 and the 1986 tax years.Calif. Rev. Tax Code Section 19057(a) has a definite FOUR(4) YEAR STATUTE OF LIMITATION for any additional taxes. The four(4) years had passed by the time the FTB had assessed

their taxes on Dec 26,1990. The appeal court is asked to rule that because the statute had run that the FTB was not allowed to assess additional taxes. Calif. Rev. Tax Code Section 19059 ONLY REQUIRES NOTICE TO THE FTB when there has been a FINAL DETERMINATION of additional taxes due to the IRS. There was NO FINAL DETERMINATION UNTIL April 26, 1994,and therefore; debtor had NO OBLIGATION TO NOTIFY the FTB prior to April 26, 1994 and thus the FTB had NO ADDITIONAL TIME TO ASSESS any additional taxes and thus Code Section19057(a),the FOUR(4) YEAR STATUTE OF LIMITATION, completely prevents the FTB from having any additional time to assess. The Appeal's court is requested to rule that the FTB taxes are invalid for failure to follow the FTB Tax Codes as discussed in the body of this appeal.

2. There was NO REQUIREMENT of an APPEAL under Tax Code Section 19059 as the Bankruptcy Judge erroneously ruled at the objection hearing but ONLY A FINAL DETERMINATION OF TAXES. The Judge also erred in ruling that the amount in dispute with the IRS was about property values. The amount was clearly related to taxes due. The Appeals court is asked to find that the Judge erred in his rulings on this code section.

3. The FTB did not assess within 240 days of the filing of Chapter 7 Bankruptcy on May 31, 1990, even though they had been given notice by the IRS on September 9, 1988(approximately two(2) years before) and therefore because they did not file, the FTB HAD NO PRIORITY CLAIM, nor did the FTB file an OBJECTION to their taxes for 1983, 1984,1985,and 1986 from being DISCHARGED as required within the 60 day period required by Bankruptcy code 705 after being notified of the Chapter 7 Bankruptcy. The FTB made no assessment of taxes until December 26,1990 nor did they respond to Attorney Mike Stelzer's letter of January 28,1991 advising them that the FTB taxes they were attempting to assess had been discharged in Chapter 7 Bankruptcy on October 15, 1990. The Appeal's court is asked to rule that the failure on the part of the FTB to assess their taxes as required by law, failure to object to the Chapter 7 Discharge and failure to raise an objection to notification of Discharge by the appellant's attorney constituted ACCEPTANCE of the Chapter 7 Bankruptcy and that all tax years in

question were DISCHARGED as filed under Chapter 7 Bankruptcy on OCTOBER 15,1990.

4. The failure of the FTB to comply with their own Revenue and Tax Code Sections:19032, 19033, 19034, 19041, 19044, 19045, 19046, 19047, 19048, as they relate to assessment and the appeal process after assessment clearly violate both the U. S. Constitution,14th Amendment, "Due Process" and "Equal Protection" clauses and the same clauses of the California State Constitution, Art 1, Sec 7(a) and 7(b) that relates to "Privileges and Immunities" that treats taxpayers differently in that both should have the four(4) year STATUTE OF LIMITATIONS of Code Section 19057 but the taxpayer who files bankruptcy is said to give additional time for the FTB to assess taxes, but the other has all the protection of the four(4) Statute of Limitations against additional assessments. This clearly treats the same taxpayers differently and violates the protection of both the U. S. Constitution and the California State Constitution as stated above. The way that the FTB assessed taxes after the Statute of Limitations had passed also denies the right of any appeal under the appeal codes listed above. No appeal rights were ever offered to appellant.

5. The principles of Civil Code Section 3527, DOCTRINE OF LACHES, clearly applies to this case as the FTB deliberately remained silent for over a five(5) year period, when they were listed to receive "NOTHING" in the confirmed payment plan of the debtor and their taxes were listed as "FORGIVEN"; they filed in a NON-PRIORITY status, and never sought to change this until their response to the Objections to their claim filed by the Debtor in 1995. In addition, they were properly listed in the Chapter 7 Bankruptcy, and filed no objections to the discharge of their taxes in the Chapter 7 Bankruptcy, nor did they assess within 240 days of the filing of the Chapter 7 Bankruptcy to gain a priority status(even though they had notice of proposed IRS assessment two(2) years before the filing of the Chapter 7 Bankruptcy by the Debtor. There is NO PROOF, other than a self serving statement by their employee, that they ever filed an assessment prior to December 26, 1990, which was the first notice to the Debtor and assessed two(2) months after the discharge of the Chapter 7 Bankruptcy on October 15, 1990. The Appeal's court is requested to rule that their

intentional silence from the time prior to the Chapter 7 Bankruptcy and all through the Chapter 13 Bankruptcy, is grounds for denying the claim of the FTB as it indicates both an acceptance of the prior discharge of the Chapter 7 Bankruptcy and created a BIAS and PREDJUICE to the detriment of the Debtor to obtain the discharge in the Chapter 13 Bankruptcy that Debtor is entitled to having completed all payments of the CONFIRMED PAYMENT PLAN of the Chapter 13 Bankruptcy.

6. The Judicial Malice, Bias, Prejudice and Negligence of the Bankruptcy Judge affected the handling of this case right from the beginning and is also further indicated by the way the Judge made his decision to overrule the Debtor's objection(See transcript of Hearing) and the giving of the full amount of the FTB claim, when the Judge was aware it had been reduced by the FTB and to also give the FTB a PRIORITY status when they had filed NON-PRIORITY and had remained in this status for over a five(5) year period. The Appeal's court is requested to find that the Judge did not rule properly in his decision in deliberately overlooking the Calif. Rev. and Tax Code Sections listed in Debtor's objection an allowing this case to go over five(5) years listing the FTB to receive NOTHING and by not following the decision he made when he confirmed Debtor's plan of payment, that gave NOTHING to the FTB or at MOST 50% of their taxes, as he did with the IRS. The Appeal's court is requested to rule that Debtor acted in GOOD FAITH under the approved payment plan and that since Debtor COMPLETED ALL REQUIRED PAYMENTS UNDER THE PLAN that Debtor is ENTITLED TO A DISCHARGE BY THE CHAPTER 13 BANKRUPTCY.

The further bias shown by the Ninth Circuit Court of Appeals in denying a Re-Hearing when adequate evidence existed that there was Judicial error and failure to examine all the issues that were presented by the Appellant and further evidence of bias and malice by ignoring a Motion to Stay the Judgment pending the filing of the Writ of Certorari with the United States Supreme Court and deliberately filing the Judgment with the U. S. District Court. This directly violates the "Due Process and Equal Protection" clauses of the 5th and 14th Amendments that Appellant is entitled to under the United States Constitution.

I was told that there are 25 Circuit Court Judges on the 9th Circuit Court in San Francisco and yet the same three(3) judges that heard the case were the same three(3) judges that denied the rehearing and also one(1) of the three(3) also denied the Stay of Mandate of Judgment(See Appendix A) and used the basis that the request was on the same date that the Mandate was issued, yet the Supreme Court should note the proof of mailing photocopied on Appendix A as proof that the mailing was on February 22,1999, Two (2) days before and according to the Rules of the Court and item is considered received by the court if mailed by 1st class mail and properly addressed, etc. So, according to law, this would not have been a Recall of Mandate. This is such an obvious case of Malice, Bias and Conspiracy to deny the Due Process Rights of the Applicant and to Prevent a Review of their Judicial Errors and a question raised as to why the same three(3) judges were allowed to deny a Re-hearing and a Stay of Mandate pending the Writ of Certiorari when there were 22 other judges available for review of Appellant's Petitions to the 9th Circuit Court of Appeals.

The Bias, Prejudice, Malice and that existed on the part of Judge Anthony W. Ishii, of the District Court due to a formal protest of his hearing Appellant's case,(See Appendix F) because he had just been appointed to the court and obviously was made aware of the Formal Protest, especially since it questioned his experience to handle a case as complex as Appellant's would be. His bias is indicated by his indicating that he relied heavily in his decision on the case of Franchise Tax Board v. Richard Bracey, No. 94-56227, 77 Fed. Reporter, 3d, 294-296.(See Appendix D, ,page 8) to try and make the facts of that case match those of Appellant and THEY DO NOT! .Bracey was assessed 14 months before he filed his Chapter 7 Bankruptcy and because his attorney filed a protest his taxes were not final until after his Chapter 7 discharge. The only similarity between Bracey and Appellant's case was the tax years of1983 and 1984 and a Chapter 7 Bankruptcy was filed--there the similarity ends!! Appellant was never audited or assessed prior to a Chapter 7 Bankruptcy being filed, the FTB did not file within 240 days of the filing of the Bankruptcy Petition, the Statute of Limitations had already run out and they did not attempt assessment until three(3) months after Appellant's Chapter 7 Discharge. They were properly noticed of the filing and of the

discharge and never issued any objection as required under the Bankruptcy code within 60 days of notice of filing of the Chapter 7 Petition; further, the issue of the FTB being required to Examine and Assess as soon as PRACTICABLE was never raised nor any of the other issues, Constitutional questions or defenses raised by Appellant were at issue in the Bracey case. Neither did any of the other cases he cited have any direct relationship to the facts of Appellant' case. This as well as the other discussion of Judge Ishii's ruling should raise the issue of his bias because of the objection to his hearing the case. The 9th Circuit judges obviously did not read the Bracey case or they would have known it did not apply to the facts of Appellant's case.

CONCLUSION

THE LAW REQUIRES THAT GOVERNMENTAL AGENCIES FOLLOW THEIR OWN RULES BEFORE IMPOSING ANY FORM OF SANCTIONS UPON CITIZENS UNDER THEIR JURISDICTION OR AUTHORITY.(See App.F(7) "Waiver") THE FAILURE OF THE CALIFORNIA FRANCHISE TAX BOARD TO OBEY THEIR OWN TAX CODE SECTIONS REQUIRED UNDER THE LAW IS A LEGAL BASIS FOR THE UNITED STATES SUPREME COURT TO DENY ANY AND ALL RIGHTS OF THE FRANCHISE TAX BOARD TO ANY ADDITIONAL TAXES IN THIS CASE. APPELLANT BELIEVES THAT ALL OF THE FOREGOING ISSUES ARE SUFFICIENT REASONS FOR THE SUPREME COURT TO RULE IN FAVOR OF APPELLANT AND TO OVERTURN THE RULING OF THE BANKRUPTCY JUDGE DENYING DEBTOR'S OBJECTION TO THE CLAIM OF THE FRANCHISE TAX BOARD AND TO ORDER THE JUDGE TO GRANT THE DEBTOR A FULL DISCHARGE OF ALL CLAIMS OF THE FRANCHISE TAX BOARD AND OTHER DEBTS UNDER THE COMPLETED PAYMENT PLAN OF THE CHAPTER 13 BANKRUPTCY AS FILED.

The foregoing is true and correct to the best of my knowledge and belief.

March 3, 1999 — Eugene C. Azamber

Date — Eugene C. Azamber
Petitioner in Pro Per

Re-formatted
May 24, 1999

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED, Mar. 17, 1999

EUGENE C. AZAMBER,
Plaintiff-Appellant

No. 98-15232

DC# CV-97-05291-AWI
Eastern California (Fresno)

v.

ORDER

FRANCHISE TAX BOARD,
Defendant-Appellee.

Before: BROWNING, Circuit Judge.

On February 24, 1999, Azamber filed a motion to stay the mandate pending writ of certiorari. However, the mandate had already been issued on that same date. Construed as a motion to recall and stay the mandate, the motion is denied. There are no exceptional circumstances justifying a recall, see Zipfel v. Halliburton Co., 861 F.2d 565, 567 (9th Cir. 1988), nor does this case present a substantial question or good cause justifying a stay pending writ of certiorari, see Fed. R. App. P. 41(b).

U.S. POSTAL SERVICE **CERTIFICATE OF MAILING**
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EUGENE C. AZAMBER
4664 W. HAMMOND
FRESNO, CALIFORNIA 93722

One piece of ordinary mail addressed to:
U.S. COURT OF APPEALS
FOR THE 9TH CIRCUIT
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S.F. CALIF 94119-3939

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APPENDIX A(1)

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street, P. O. Box 193939
San Francisco, CA 94119-3939
February 24, 1999

USDC, Fresno Eastern District of California (Fresno)
United States Courthouse .
130 "O" Street, Room 408
Fresno, CA 93721
C.A. N0. 98-15232 Azamber v. Franchise Tax Board
AGENCY/ D.C. No. CV-97-05291-AW

Dear Clerk:

The following document(s) in the above listed cause(s) is (are being sent to you under cover of this letter. Counsel are being served with a copy of this letter only.

(X)Certified copy of the Decree of the Court
( )Judgment of the National Labor Relations Board
( )Certified copy of the Entry of Dismissal

The record on appeal will follow under separate cover.
Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,

Cathy A. Catterson
Clerk of Court
/s/ Donna Gilmour
By: Donna Gilmour
Deputy Clerk

Enclosure(s)
cc: ALL COUNSEL, WITHOUT ENCLOSURES

APPENDIX A(2)

EUGENE C. AZAM8ER
Appellant In Pro Per
4664 West Hammond
Fresno, California, 93722
Telephone (209) 442-4600,ext.8491

Appellant In Pro Per

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EUGENE C. AZAMBER Appellant	U. S. Circuit Court Docket No. 98-15232
FRANCHISE TAX BOARD Appellee	MOTION TO STAY MANDATE OF JUDGMENT PENDING WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

MOTION TO STAY MANDATE OF JUDGMENT PENDING THE FILING OF A WRIT OF CERTIORARI WITH THE UNITED STATES SUPREME COURT FOR A PERIOD OF THIRTY (30) DAYS IS HEREBY REQUESTED BY EUGENE C. AZAMBER, APPELANT IN THE ABOVE NAMED CASE, IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, SAN FRANCIS-CO,CALIFORNIA,BECAUSE OF THE ERRORS IN THE JUDGMENT AND THE DENIAL OF A RE-HEARING AND FULL COURT REVIEW BY THE NINTH CIRCUIT COURT OF APPEALS FILED ON THE 18th OF FEBRUARY 1999.
The parties affected by this motion and the names and addresses of the respective attorneys are as follows:
Franchise Tax Board
Robert D. Milam, Deputy Attorney General
Attorney General's Office of the State of California
P. O. Box 94425S 1300 "I" Street, Suite 125
Sacramento, California,94244-2550

Dated: February 22, 1997 Signed /s/ Eugene C. Azamber
EUGENE C. AZAMBER
Appellant in Pro Per

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: EUGENE C. AZAMBER Debtor	No. 98-15232
	DC No.CV-97-05291AWI
EUGENE C. AZAMBER, Plaintiff-Appellant, v. FRANCHISE TAX BOARD, Defendant-Appellee.	Eastern California(Fresno) ORDER

Before: BROWNING, TROTT and SILVERMAN, Circuit Judges

The petition for panel rehearing is denied. No further filings will be accepted in this closed appeal.

APPENDIX C
NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re EUGENE C. AZAMBER,
Debtor.

No.98-15232

D.C. No.
CV-97-05291 AWI

EUGENE C. AZAMBER,
Plaintiff-Appellant,

v.

FRANCHISE TAX BOARD,
Defendant-Appellee .

MEMORANDUM [1]

Appeal from the United States District Court
for the Eastern district of California
Anthony W. Ishii, District Judge, Presiding
Submitted December 14, 1998 [2]

Before: BROWNING, TROTT, and SILVERMAN, Circuit Judges

Eugene C. Azamber, a Chapter 13 debtor, appeals pro se the district court's affirmance of the bankruptcy court's overruling of his objection to the Franchise Tax Board's claim for state income taxes. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *see In re Claremont Acquisition Corp., 1* 13 F.3d 1029, 1031 (9thCir. 1997),and we affirm.

Because Azamber's tax deficiency was not assessed until after his Chapter 7 petition was filed, the Franchise Tax Board's claim was not discharged by Azamber's Chapter 7 bankruptcy. *See* 11 U.S.C. §§ 507(a)(8)(A)(iii), 523(a)(1); *see also In re Bracey, 77* F.3d 294, 295-296 (9th Cir. 1996).

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App.P. 34(a);, 9th Cir. R. 34-4.

Further, because Azamber failed to notify the Franchise Tax Board of the Internal Revenue Service's assessment of additional taxes, the Franchise Tax Board's claim in the Chapter 13 proceeding was not barred by the four year statute of limitations. *See* Cal. Rev. & Tax. C. § 18586.2 (1992). Accordingly, the bankruptcy court correctly overruled Azamber's objection to the Franchise Tax Board's claim in the Chapter 13 proceeding.

We have considered the remaining issues raised by Azamber and conclude that they lack merit.
AFFIRMED.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

IN RE EUGENE C. AZAMBER,)	CV F 97-5291 AWI
Debtor/Appellant)	OPINION AND ORDER
)	AFFIRMING ORDER OF
)	BANKRUPTCY COURT
)	(Doc.1)

Appellant Eugene C. Azamber ("Azamber"), a Chapter 13 debtor, appeals from an Order Overruling Debtor's Objection to Claim of Franchise Tax Board ("FTB"). In this order the bankruptcy court determined that the FTB's claims for additional state income taxes from Azamber are priority claims.

On appeal, Azamber asks this court to reverse the decision below and deny the claims of the FTB. While Azamber raised a number of contentions on appeal, his main two grounds for reversal are that (1) the FTB claims were discharged as a result of Azamber's 1990 Chapter 7 bankruptcy proceeding, and (2) the FTB claims are barred by the statute of limitations.

JURISDICTION

28 U.S.C. § 1 58(a)(1) provides that a district court has jurisdiction to hear appeals from "final judgments, orders, and decrees" of a bankruptcy court. If the term "final," as used in ordinary civil litigation, were applied in a bankruptcy proceeding, only the order closing the bankruptcy case would truly be "final." In re Mason, 709 F. 2d 1313, 1316 (9th Cir. 1983). Because of the unique nature of a bankruptcy proceeding, however, the Ninth Circuit takes a "pragmatic approach in determining finality" under section 158. In re Vylene Enterprises. Inc., 968 F. 2d 887; 894 (9th Cir. 1992). Under this approach, a challenged order is "final" if it "resolves and seriously affects substantive rights" and it "finally determines the discrete issue to which it is addressed." In re Lewis, 113 F. 3d 1040, 1043 (9th Cir. 1997).

The Seventh Circuit, in explaining its version of the

pragmatic approach to determining the finality of a bankruptcy order, explains that a bankruptcy proceeding "is often a conglomeration of separate adversary proceedings that, but for the status of the bankrupt party which enables them to be consolidated in one proceeding, would be separate, stand-alone lawsuits." In re James Wilson Assocs., 965 F. 2d 160, 166 (7th Cir. 1992).

The dispute here is between Azamber, a debtor, and the FTB, a creditor. The order determines that the FTB's claims are valid and are priority claims. While the trustee will have some level of discretion as to the manner in which the FTB claims will be paid as part of the overall plan, the issue of whether Azamber is liable for the claims, and whether they are entitled to priority status, has been resolved as between Azamber and the FTB.

Because the order "finally" resolves the issue of the validity of the FTB's claims, the court concludes that the order is appealable under section 158(a)(1). See In re Saco Local Development Corp., 711 F. 2d 441, 448 (15' Cir. 1983) (bankruptcy court order finding that a claim was entitled to priority status was "final"; fact that the creditor might not obtain the entire amount due to the existence of competing claims and limited resources of the bankrupt did not mean that order was not "final").

PROCEDURAL HISTORY

Azamber's pending Chapter 13 bankruptcy petition was filed February 20, 1991. The FTB filed a claim in the action for state incomes taxes, to which Azamber filed an objection. The Hon. Brett Dorian heard the objection on February 19, 1997, and orally overruled Azamber's objection to the validity of the FTB's claims at the hearing. A written order to that effect was filed February 28, 1997. Azamber filed a timely notice of appeal on March 12, 1997.

The written order appealed from makes the following findings of fact and conclusions law relevant to the statute of limitations issue:

1. Cal. Rev. & Tax Code § 19057 provides for a four-year statute of limitations on certain tax deficiency assessments, and that the section authorizes longer limitations periods in certain other cases;

2. Cal. Rev. & Tax Code § 19060, which provides that if a

taxpayer fails to report to the FTB a change in federal taxes owed, then the FTB has fours years from learning of the change to make a state tax assessment, is the applicable statute of limitations as to the pending dispute;

3. Azamber's federal taxes were changed and he did not report the changes to the FTB; and

4. the FTB properly made an assessment within the four year limitations period allowed under state law when a taxpayer does not notify the FTB of a change to his or federal tax return.

At the oral hearing the bankruptcy court also made the following finding of fact and conclusion of law relevant to the issue of whether the FTB's claims were discharged in Azamber's prior Chapter 7 proceeding:

1. the FTB's tax assessments became final, one on October 24th of '90 and the other December 26th of '90; and

2. the FTB assessments were not discharged in the Chapter 7 proceeding.

The bankruptcy court also orally made the following finding of fact, relevant to Azamber's argument that he did not receive copies of the assessments from the FTB:

1. the copies of the assessments submitted to the bankruptcy court by the FTB were sent to Azamber.

FACTS

Azamber filed his tax returns for the years 1983 - 1986, inclusive, when due on April 15 of each year. Azamber's Opening Brief, Exh. G ¶ 3.[1]

At some point prior to September 6, 1988, the Internal Revenue Service ("IRS") audited Azamber for the tax years 1983, 1984, and 1985. Exh. L ¶ 3. The IRS determined Azamber's federal returns were deficient in some manner, and revised his federal tax returns. Id. The IRS notified the FTB about the change in Azamber's federal tax returns for 1983, 1984 and 1985 at some time "shortly thereafter" September 6, 1988. Id.

At some undisclosed date, the Internal Revenue Service recalculated the amount of federal tax Azamber was liable for in regards to the tax years 1986 and 1987. Exh. B.

On May 30, 1990 Azamber filed a "Chapter 7" bankruptcy petition. Exh. G ¶ 4. On a schedule filed in that action, Azamber listed the FTB as a "creditor" with an unsecured,

nonpriority claim, specifically referring to any FTB claims for tax years 1983, 1984, 1985, and 1986 in an "amount unknown." Id.

On August 24, 1990, while the Chapter 7 petition was pending, the FTB issued Notices or Proposed Assessments ("NPAs") for the tax years 1983, 1984, and 1985. Exh. L ¶ 4. The NPAs would have become "final" October 24, 1990.[2] Id. Azamber maintains that he never received the NPAs for 1983, 1984, and 1985. Exh. Q. Declaration of Eugene Azamber ¶10.

Azamber's Chapter 7 petition was discharged October 15, 1990. Exh. G ¶ 5

On December 26, 1990 the FTB mailed to Azamber a State Income Tax Official Notice requesting that he pay $17,683.21 for the tax years 1983, 1984, and 1985. Exh. M.

On January 28, 1991 Michael W. Stelzer, counsel for Azamber, wrote to the FTB to advise them of Azamber's Chapter 7 discharge and to request that the FTB to "confirm with my office that you do not intend any further collections." Exh. H.

Azamber filed the pending action, a Chapter 13 bankruptcy petition, on February 20,1991. Exh. G ¶ 1. On April 25, 1991, the FTB filed a claim in the action for $17,987.35, which was the tax claimed for the tax years 1983 to 1985, inclusive. Id., ¶ 2.

On January 9, 1992 the FTB issued to Azamber NPAs for the tax years 1986 and 1987. Exh. L ¶ 5. The January 9, 1992 NPAs became final March 10, 1992.[3] Id.,¶¶ 4,5.

[1]All further references to exhibits correspond to exhibits attached to Azamber's Opening Brief.

[2] Under former Cal. Rev. & Tax Code § 18591, now codified as section 19042, a proposed notice of assessment becomes final after the expiration of a sixty day period in which the taxpayer can object to the assessment

[3] See Footnote 2.

On October 26, 1992 the FTB filed a supplemental claim

in Azamber's Chapter 13 action for $4,140.46, which was the tax claimed for the tax years 1986 and 1987. Exh. N.

STANDARD OF REVIEW

When reviewing decisions of a Bankruptcy Court, this court reviews conclusions of law de nova, while findings of fact are to be upheld unless they are clearly erroneous. In the Matter of Pizza of Hawaii. Inc., 761 F. 2d 1374, 1377 (9th Cir. 1985). "A finding is clearly erroneous if after a review of the record, the appellate court is left with a firm and definite conviction that error has been committed." In re Burkhart, 84 B.R. 658, 660 (Bankr. 9th Cir. 1988).

DISCUSSION

On appeal Azamber takes issue with a number of legal conclusions and factual findings of the bankruptcy court. The two main contentions are that the bankruptcy court erred in ruling that the state tax claims were not discharged in Azamber's prior Chapter 7 proceedings, and that the FTB claims were not barred by the statute of limitations.

The FTB Claims Were Not Discharged in the Prior Chapter 7 Proceeding

Azamber maintains that the FTB claims for the tax years 1983 - 1986, inclusive, were discharged as a result of his prior Chapter 7 proceeding.

The fundamental purpose of a Chapter 7 bankruptcy is to identify creditors, determine the amounts due to creditors, ascertain if the claims are secured or unsecured and their priority, and liquidate the assets of the bankrupt to satisfy the claims in order of priority as set forth in the Bankruptcy Code. Farmers National Bank v. Shirev, 126 Idaho 63 (Idaho 1994). A Chapter 7 "discharge affects all creditors by voiding past and future judgments establishing debtors' personal liability for debts subject to the discharge and permanently enjoining them from chasing debtors." In re Speece, 159 B.R. 314, 322 (E.D. Cal. 1993).

When Azamber filed his Chapter 7 petition, he filed a schedule listing the FTB as a creditor with an unsecured, non-priority claim, specifically referring to the FTB claims for tax years 1983, 1984, 1985, and 1986 in unknown amounts. He maintains that, because the FTB did not object to the

granting of a discharge, its claims for those years were extinguished.

11 U.S.C. §727(c)(1) provides that a creditor in a Chapter 7 proceeding may object to the granting of a discharge. It is undisputed that the FTB did not object to the granting of the Chapter 7 discharge. The FTB maintains, however, that its claims were non-dischargeable as a matter of law so that its failure to object in the Chapter 7 proceeding did not extinguish its right to recover the debts at a later date.

The Chapter 7 discharge order states that Azamber is "released from all dischargeable debts." A Chapter 7 discharge only discharges the bankrupt from all debts that arose before the date of the order for relief "except as provided in section 523 of this title." 11 U.S.C. § 727(b).

11 U.S.C. § 523(a)(1)(A) provides that a tax "of the kind and for the periods specified it section ... 507 (a)(8) of this title, whether or not a claim for such tax was filed or allowed" is no discharged in a Chapter 7 proceeding.

11 U.S.C. § 507(a)(8)(A), in turn, includes income tax claims of "governmental units"

> (i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;
> (ii) assessed within 240 days, plus any time plus 30 days during which an offer i compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition; or
> (iii) ... not assessed before, but assessable, under applicable law or by agreement after, the commencement of the case.

The FTB claims are income tax claims and the FTB is a recognized agent of a governmental unit, the State of California. The FTB claims for 1983 -1986, inclusive, were therefore not dischargeable in the Chapter 7 proceeding if they fit within one of the three subsections set forth above. As will be explained, the claims fit within subsection iii of section 507(a)(8)(A)

Azamber filed his Chapter 7 petition on May 30, 1990, which for the purpose of section 507(a)(8)(A)(iii) is the "commencement of the [Chapter 7] case." Because it is undisputed that the claims were not assessed before May

30, 1990, the claims were therefore not discharged in the Chapter 7 proceeding only if they were "assessable, under applicable law or by agreement, after, the commencement of the case."

At the hearing of this matter, the FTB took the position that it was required by section 507(a)(8)(A)(iii) to issue Notices of Proposed Assessments during the pendency of Azamber's Chapter 7 bankruptcy proceeding in order for the taxes to be considered "assessable" within the meaning of subsection iii. Not surprisingly, Azamber agreed with this interpretation. However, the parties' proposed interpretation of subsection iii is incorrect as a matter of law, and thus the factual dispute over the mailing of the NPAs is irrelevant to determining whether or not the FTB claims were discharged in the Chapter 7 proceeding.[4]

The parties' proposed interpretation of section 507(a)(8)(A)(iii) is at odds with 11 U.S.C § 523(a)(1)(A), which provides that a tax assessment falling within section 507(a)(8)(A)(iii) is not discharged in a Chapter 7 proceeding "whether or not a claim for such tax was filed or allowed."

The Tenth Circuit considered the congressional intent behind section 523 and section 507(a)(8)(A)(iii), and determined that Congress created these statutes because "Congress intended that the IRS not be forced to audit and assess all taxes during the course of bankruptcy proceedings in order to preserve its right to collect such taxes." In re DePaolo, 45 F. 3d at 377. This congressional intent would extend to state tax assessment agencies such as the FTB. If Congress did not intend to force a tax assessment agency to conduct an audit during the course of a bankruptcy proceeding, then it is reasonable to conclude that it did not intend to require that same tax assessment agency to give notice of its intent to assess taxes during the pendency of the bankruptcy proceeding.

Courts interpreting section 507(a)(8)(A)(iii) hold that it refers to a tax liability, arising from activity by the debtor occurring before the debtor filed the petition, that is assessed

[4]The court notes that the bankruptcy court did make a finding of fact that the NPAs were sent to Azamber. See Discussion, sec. V

after the bankruptcy petition is filed. In re Bracev, 77 F.3d

294 (9th Cir. 1996); in re L.J. O'Neill Shoe Co., 64 F. 3d 1146, 115 I (8th Cir. 1995); In re DePaolo, 45 F.3d 373, 377 (IO^th Cir. 1995); In re Fingers, 170 B.R. 419, 437 (S.D. Cal. 1994).

The Ninth Circuit's holding in In re Bracev is particularly instructive to this court. In that action, the FTB mailed NPAs for tax years 1983 and 1984 to Bracey on February 23, 1988. Because Bracey did not protest the 1983 NPA within the sixty day period provided by then Cal. Rev. & Tax Code § 18590, now codified as Cal. Rev. & Tax Code § 19041, the 1983 proposed assessment became final under state law sixty-one days later. Bracey did file a protest as to the 1984 NPA within sixty days, and thus it did not become final sixty-one days later. On June 16, 1989 Bracey filed a petition for Chapter 7 bankruptcy, and he received a discharge October 24, 1989. Thereafter, on May 17, 1991, the FTB's proposed assessment for the 1984 tax became final under state law.[5] Bracey later filed in the Bankruptcy Court a "Notice of Motion for Contempt" essentially requesting that the Bankruptcy Court declare that the FTB's 1983 and 1984 taxes had been discharged due to the Chapter 7 discharge. 77 F. 3d at 295-296.

The Ninth Circuit held that on those facts the 1983 tax assessment became final more than 240 days before Bracey filed his Chapter 7 petition, and the debt was therefore discharge the Chapter 7 proceeding. Id. at 295 n.2. However, the court further held that the 1984 tax assessment was assessed, that is, it became final under state law, after the date on which Bracey filed his Chapter 7 petition. Therefore the 1984 tax assessment was not discharged in the Chapter 7 proceeding pursuant to the section currently codified as 11 U.S.C. § 507(a)(8)(iii). ids at 295-97.

As explained in Bracey, the relevant question in this appeal is whether the FTB's proposed assessments for the tax years 1983, 1984 and 1985 were final when Azamber

[5]The date that the 1984 tax assessment became "final" is not given in the Ninth Circuit's opinion, but is provided in a earlier reported decision when the case was before the Bankruptcy Appellate Panel of the Ninth Circuit. 170 B.R. 398, 399 (Bankr. 9^ Cir. 1994). The Ninth Circuit was reviewing the decision of the Bankruptcy Appellate Panel, which in turn was relaying the facts as found by the bankruptcy trial court.

Filed his Chapter 7 petition. The FTB claims that the assessments became "final" on October 24, 1990, which is sixty-one days after it issued the NPAs. Azamber, on the other hand, claims that he never received the NPAs, and so therefore he maintains that the claims became "final" when he first received notice of the assessments, which was December 26, 1990. It is unclear whether the bankruptcy court decided amongst these two views, but under either scenario, the claims for 1983, 1984 and 1985 were not final when Azamber filed his Chapter 7 petition on May 30, 1990 Therefore, under In re Bracev, they were not discharged in Azamber's Chapter 7 proceeding.

There is no indication that the bankruptcy court accepted the interpretation of section 507(a)(8)(A)(iii) offered by the parties on appeal. Judge Dorian concluded orally at the hearing below that the claims were not discharged in the Chapter 7 petition because "the Franchise Tax Board assessment became final, one on October 24th of '90 and the other on December 26th of '90." Reporter's Transcript of Proceedings, February 19, 1997, 4:21-22. This is the relevant al necessary finding under In re Bracey, not whether the FTB provided Azamber with notice of th proposed assessments while the Chapter 7 petition was still pending.

As a separate issue, Azamber maintains that the FTB claims were discharged because the assessments were not made within 240 days before the filing of his Chapter 7 petition. This is, argument that the claims do not fit within subsection ii. Section 507(a)(8)(A) provides that the income tax debt is non-dischargeable if it fits within any one of its three subsections. Because the claims fit within subsection iii, it is of no import that they do not fit within subsection ii.

II. The FTB Claims Were Timelv Assessed

Azamber also asserts that the FTB claims were not "assessable" in the sense that they were already barred by the statute of limitations when the assessment notices became final. In support of his argument, Azamber relies on Cal. Rev. & Tax. Code § 19032, formerly codified section 18582, which states that "[a]s soon as practicable after the return is filed, the [FTB] shall examine it and shall determine the correct amount of the tax."

A statute that limits the time in which a tax may be assessed or collected is, under state law, a statute of limitations. Mudd v. McColgan, 30 Cal. 2d 463, 467 (Cal. 1947). In Mudd the California Supreme Court interpreted the language in Cal. Rev. & Tax Code § 19032, as it was then codified in Section 19 of the Personal Income Tax Act of 1935, as amended 1939. At that time the statute included the basic 'as soon as practicable" language now codified in Cal. Rev. o Tax Code § 19032 plus the basic language now codified in Cal. Rev. & Tax Code § 19057(a), which provides, with some exceptions, that a notice of assessment shall be mailed to the taxpayer within four years after the filing of the return. Mudd found that this combined statute was a statute of limitations "which bars the remedy for enforcement in the event that notice be not mailed within the prescribed time," and more specifically, that the portion now codified in section 19032 provided the procedural means of ascertaining a tax deficiency. 30 Cal. 2d at 467.[6]

Azamber, in reliance on the language set forth in section 19032, seeks a determination that the FTB waited too long to examine his state tax returns. Azamber submits that the phrase "as soon as practicable" should mean that the FTB has but one or two years to review a return after it is filed, and that if the review does not so occur, any claim for further assessments are barred. At a minimum Azamber maintains that "as soon as practicable" cannot be interpreted to mean more than four years, the limitations period set forth in section 19057(a).

Cal. Rev. & Tax Code § 19057(a), formerly codified as section 18586(a), states that

> [e]xcept in case of a fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless

[6]During the 1940s the California Legislature split the two provisions into separate statutes, one expressing the procedural means of ascertaining a deficiency (now codified as section 19032), and the other expressing how the FTB must give notice of a deficiency (now codified as section 19057(a).

the notice is mailed within the four-year period or the period otherwise provided.

Statutory language "must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear." Moyer v. Workmen's Compensation Appeals Board, 10 Cal. 3d 222, 230 (Cal. 1973). "Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." Id.

Section 19057(a) provides that a notice of assessment must be mailed within four years c the date that the return in question was filed "except as otherwise expressly provided in this part." The quoted language indicates that the four year period in 19057(a) can be superseded by other sections in the Cal. Rev. & Tax Code.

One such section is Cal. Rev. & Tax Code § 19060(a), which provides that

> "[i]f a taxpayer fails to report a change or correction by the Commissioner of Internal Revenue ..., a notice of proposed deficiency assessment resulting from the adjustment may be mailed to the taxpayer at any time after the change, correction or amended return is reported to or filed with the federal government."

Section 19060 became operative January 1, 1994, and therefore would apply to a federal "change or correction" occurring after that date. As to unreported federal changes or corrections that occurred in 1988, the year in which the bankruptcy court found that the IRS' corrections to Azamber's 1983, 1984, and 1985 federal tax returns became final, the applicable statute would be the former Cal. Rev. & Tax Code § 18586.2. That section contains the same language as the current section 19060(a) except that the prior statute contained a four year limitations period running from the date of the federal change or correction:

> [i]f a taxpayer fails to report a change or correction by the Commissioner of Internal Revenue ..., a notice of proposed deficiency assessment resulting from to adjustment may be mailed to the taxpayer within four years after the change, correction, or amended return is reported to or filed with the federal government.

The bankruptcy court found that Azamber's federal tax returns for the relevant years were changed, that he did not report the changes to the FTB, and therefore the applicable limitations period was four years from the date of the federal changes. The bankruptcy court erroneously cited section 19060 as legal support for its conclusion, when the correct citation should have been the former 18586.2. The fact that the bankruptcy court cited section 19060 instead of the former 18586.2 does not compel reversal. This court will affirm the decision below on any ground finding support in the record, even if the lower court gave the wrong reasoning. Marino v. Vasquez 812 F. 2d 499, 508 (9th Cir. 1987). Here the bankruptcy court's legal reasoning was in fact correct. It simply gave a wrong citation which did not prejudice Azamber.

Azamber does not dispute that his federal tax returns for the relevant years were changesd and does not claim that he reported the changes to the FTB. He nevertheless maintains that former section 18586.2 does not apply for two reasons. First he states that the "as soon as practicable" language in section 19032 by itself barred the filing of the assessments. The court disagrees because Azamber's proposed interpretation of that phrase, to mean at most four years from the original filing of his state income tax return, renders meaningless the language in section 19057(a) creating a four year limitations period "except as otherwise expressly provided in this part," and also renders meaningless the language of former section 18586.2.

Azamber alternatively takes issue with the factual finding of the bankruptcy court that the federal tax changes to his returns became final on September 6, 1988. That finding meant that the FTB had four years from September 6, 1988 to make its assessments, which it did. Azamber instead, maintains that the federal tax changes became final on April 26, 1994.

Even assuming that the bankruptcy court should have determined that April 26, 1994 was the date on which the federal tax changes became final, as a matter of law the FTB claims would still be timely. If the federal tax changes became final in 1994, the applicable statute of limitations would be the current section 19060(a), under which the FTB

may make its assessment unencumbered by any limitations period [7]

III. The FTB Claims Are Not Barred by the Doctrine of Laches

Azamber states that the FTB claims should be barred under the doctrine of laches. He relies on Cal. Civ. Code § 3527 which codified the doctrine of lashes: "[t]he law helps the vigilant, before those who sleep on their rights."

Cal. Civ. Code § 3527 is not a valid defense to the FTB claim. The doctrine of laches is an affirmative defense allowed in state suits in equity, but prohibited in state suits for damages Adler v. Los Angeles Unified School Dist., 98 Cal. App. 3d 280, 289 (Cal. Ct. App. 1976). While Azamber is in effect a defendant as to the claim by the FTB, the FTB claim cannot be construed as a suit in equity.

The laches defense also fails on the merits. Azamber maintains that the FTB was guilty of laches by not answering a January 28, 1991 letter from his then-attorney asking the FTB to confirm that it did not intend to pursue collections against Azamber. The FTB, however, was under no obligation to respond to the letter, and furthermore did "answer" by filing its first claim in the Chapter 13 proceeding April 24, 1991, less than three months later.

Azamber also states that the FTB never informed him or his counsel that it did not agree with Azamber's position that its claims were already extinguished due to the Chapter 7 discharge, and that the FTB did not object to a plan offered by his bankruptcy trustee, and confirmed by the bankruptcy court, in which the FTB would not receive any payments as part of the Chapter 13 reorganization plan. The court,

[7]For this reason the court finds it unnecessary to consider Azamber's argument that the bankruptcy court erred by not allowing him to present evidence after the hearing to establish that he had appealed the federal tax changes. Even if such evidence were allowed, and did show that Azamber had appealed the federal changes, the best result would be a factual finding that the federal changes became "final" on or about April 26, 1994. Yet if that were the case, as explained above, the FTB assessments would still be timely.

however, is not aware of any authority which would obligate the FTB to expressly inform Azamber or his counsel that it believed its claims were not extinguished by the Chapter 7 discharge. The fact that the FTB filed claims in this action by itself was sufficient to inform Azamber, his counsel, the trustee, and the bankruptcy court that the FTB believed its claims were still valid.

IV. The Argument that 1986 and 1987 Amounts Are Incorrect Was Either Waived or Is Moot

As to the 1986 and 1987 claims, Azamber maintains that the bankruptcy court erred in allowing the entire claim. Azamber did offer below a copy of a letter he received from Donna Webb with the FTB. In the letter, dated February 28, 1996, Webb states, in relevant part, that

> we have obtained additional information from the IRS regarding the 1986 and 1987 tax years. Based on the new information, we have canceled your 1986 and 1987 NPAs. We will be re-issuing the NPA on your 1986 tax year. FTB will no be re-issuing an assessment against your 1987 tax year.

Exh. E.

The following occurred at the hearing before the bankruptcy court:

The Court: ... [t]he claim that was filed by Franchise Tax Board hasn't separately set out what the amounts were for each tax year, and the amounts don't appear to be consistent with the assessments that Franchise Tax Board made.

Mr. Milam [counsel for FTB]: That's a new one on me, your Honor, I haven't even looked at that.

The Court: Now, *the problem is, Mr. Azamber, though, that you never objected to the amounts of these taxes, you were only objecting -- your objection was based on the ground that there was no tax due.*

Mr. Azamber: That's right.

The Court: And accordingly, based on what your objection has been, and because those objections don't raise any grounds on which the Court can -

Mr. Azamber: But, you see, your Honor, I never had any figures from them. 19034 requires them to give me a breakdown.

The Court: They gave you a breakdown -

Mr. Azamber: No, they didn't.

The Court: -- when they filed the notice of assessment.

Mr. Azamber: But they didn't until they filed their objection here.

The Court: No. Well -- well, they have copies of what they sent you and the Court will accept that as having been done.

Of course, I think the result of this, Mr. Azamber, is that your case will probably be dismissed, but I am going to overrule the objection and allow the claim as filed.

I'm not certain how the trustee views these claims, Mr. Milam. *There was a claim filed in -- on October of 1992, which covered the '86 and '87 taxes. Now those taxes were not part of the amendment filed on October 2 nd*, but I'll leave that up to the trustee to deal with.

Mr. Milam: Okay.

Exh. U. 18:4 - 19:14 (emphasis added).

The above discussion establishes that Azamber's argument on appeal as to the amount t the 1986 and 1987 taxes lacks merit for two reasons. First, Azamber made a statement to the bankruptcy court in which he essentially stated that he is not contesting the amounts in the claims, but rather that he is contending that he owes no taxes at all. Therefore Azamber waived the "amount" argument below. Second, the bankruptcy court refers to the FTB's October 2 amended claim in which the FTB does not include any tax assessments for 1986 and 1987, thus making any argument on appeal as to the amount due for those years moot.[8]

V. Azamber Has Not Established That The Bankruptcy Court's Finding That He Received Notice of The Tax Assessment Is Clearly Erroneous

Azamber argues that the FTB violated the California Due Process and Equal Protection Clauses by not complying with certain notice requirements set forth in the Cal. Rev. & Tax Code.

[8]The court has searched through the record on appeal, and has not located the "October 2" amended claim. Because Azamber has not provided it to the court, it is impossible for the court to review what effect this document has on his argument on appeal.

Azamber essentially maintains that he never received notice of the assessments. The bankrupts court reviewed the exhibits presented by the FTB, which included copies of the assessments attached as exhibits to the declaration of Gail Miller, and made a factual finding that they were sent. The exhibits contain Azamber's name and address, and this court is not convinced that the bankruptcy court's factual finding that they were sent is clearly erroneous. This court, charged with reviewing the decision below, cannot reweigh the evidence presented to the bankruptcy court.

VI. Azamber Lacks Standing To Raise The "Privileges & Immunities" Argument Made

Azamber asserts that the FTB violates the state Privileges and Immunities Clause when applies a longer statute of limitations to taxpayers who have filed for bankruptcy. Azamber lacks standing to raise this issue on appeal because the FTB is not applying a different statute of limitations to Azamber based on his status as a bankrupt.

The fact that the assessments are timely under state law has nothing to do with the fact that Azamber filed for bankruptcy protection under Chapter 7 or Chapter 13. If Azamber had never filed a bankruptcy petition, the FTB would have been able to pursue its claims for assessments in a separate administrative or civil action. Instead the FTB filed its claims in the Chapter 13 proceeding because, had it filed them in a state proceeding, in all likelihood the matter would have been stayed due to the federal bankruptcy proceeding. 11 U.S.C. § 362 (automatic stay provision).

VII. The Judicial Bias Claim Is Not Supported By The Record

Azamber maintains that the bankruptcy court has shown malice, bias, prejudice, and negligence in the manner in which his Chapter 13 petition has been reviewed. These contentions are, for the most part, general in nature and not subject to meaningful appellate review. For instance, Azamber questions whether the bankruptcy court reviewed the file.

Azamber also states that the bankruptcy court has on many occasions objected to the amount of "religious contributions" that Azamber has made. This court has not

been presented with a reporters' transcript at which such comments were made, and therefore it is not possible for the court to review the propriety of any such statements.

CONCLUSION

The bankruptcy court correctly determined that the claims of the FTB were not discharged in Azamber's prior Chapter 7 proceeding, and that the claims were timely assessed under the applicable state statute of limitations. Azamber also has not established that the doctrine of laches bars the FTB's claim, nor that the factual findings of the bankruptcy court were clearly erroneous. The Order Overruling Debtor's Objection To Claim of Franchise Tax Board is therefore affirmed.

ORDER

For the reasons stated in the above Opinion, the Order Overruling Debtor's Objection To Claim of Franchise Tax Board is hereby AFFIRMED.

DATED: February 3, 1998

/s/ ANTHONY W. ISHII
ANTHONY W. ISHII
UNITED STATES DISTRICT JUDGE

APPENDIX E
CALIFORNIA REVENUE AND TAX CODES [1]

19032. Examination of return and determination of tax
As soon as practicable after the return is filed, the Franchise Tax Board shall examine it and shall determine the correct amount of the tax.
(Added by Stats.1993, c. 31 (S.B.3), § 26, eff. June 16, 1993, operative Jan. 1, 1994.)

19034. Deficiency notice; contents
Each notice shall set forth the reasons for the proposed deficiency assessment and the computation thereof.
(Added by Stats.1993, c. 31 (S.B.3), § 26, eff. June 16, 1993, operative Jan. 1, 1994.)

19057. Mailing deficiency notices; assessment or collection of deficiency; limitation period
(a) Except in the case of a false or fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise provided.

19059. Correction or amendment of federal return; time for notice of deficiency assessment
(a) If a taxpayer is required by subdivision (a) of Section 18622 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority and does report. the change or correction within six months **AFTER THE FINAL FEDERAL DETERMINATION**, a notice of proposed deficiency assessment resulting from those adjustments may be mailed to the taxpayer within two years from the date when the notice is filed with the Franchise Tax Board by the taxpayer, or within the periods provided' in Section 19057, 19058, or 19065, whichever period expires later.

[1] West's Annotated Codes, Rev. & Taxation, Sec. 17071 to 23000, Vol. 61, West Pub. Co., 1994.

APPENDIX E(1)
CALIFORNIA REVENUE AND TAX CODES [1]

19032. Examination of return and determination of tax

As soon as **practicable** after the return is filed, the Franchise Tax Board shall examine it and shall determine the correct amount of the tax.
(Added by Stats.1993, c. 31 (S.B.3), § 26, eff. June 16, 1993, operative Jan. 1, 1994.)

19033. Deficiency notice; mailing

If the Franchise Tax Board determines that the tax disclosed by the taxpayer on an original or amended return, including an amended return reporting federal adjustments pursuant to Section 18622, is less than the tax disclosed by its examination, it shall mail notice or notices to the taxpayer of the deficiency proposed to be assessed.
(Added by Stats.1993, c. 31 (S.B.3), § 26, eff June 16, 1993, operative Jan. 1, 1994. Amended by Stats.1993, c. 877, (S.8.673), § 26, eff. Oct. 6, 1993, operative Jan. 1, 1994.)

19034. Deficiency notice; Contents

Each notice shall set forth the reasons for the proposed deficiency assessment and the computation thereof.
(Added bit Stats.1993, c. 31 (S.B.3), § 26, eef. June 16, 1993, operative Jan. 1, 1994.)

19041. Protest against proposed deficiency assessment; time; contents

Within 60 days after the mailing of each noticc of proposed deficiency assessment the taxpayer may file with the Franchise Tax Board a written protest against the proposed deficiency assessment, specifying in the

protest the grounds upon which it is based.
(Added by Stats.1993, c. 31 (S.B.3), § 26, off.. June 16. 1993, operative Jan. 1, 1994.)

19044. Protest; reconsideration of assessment; hearing

If a protest is filed, the Franchise Tax Board shall reconsider the assessment of the deficiency and, if the taxpayer has so requested in his or her protest, shall grant the taxpayer or his or her authorized representatives an oral hearing. The Franchise Tax Board may act on the protest in whole or in part. In the event the Franchise Tax Board acts on the protest in part only, the remaining part of the protest shall continue to be under protest until the Franchise Tax Board acts on that part.
(Added bv Stats.1993, c. 31 (S.8.3), § 26, eff. June 16, 1993, operative Jan. 1, 1994.)

19045. Protest; finality of action; time for appeal

The Franchise Tax Board's action upon the protest, whether in whole or in part, is final upon the expiration of 30 days from the date when it mails notice of its action to the taxpayer, unless within that 30-day period the taxpayer appeals in writing from the action of the Franchise Tax Board to the board.
(Added by Stats.1993, c. 31 (s s 3)~ § 26, eff. June 16, 1993, operative Jan. 1, 1994.)

19046. Appeal to Board of Equalization; addressing and mailing

Two copies of the appeal and two copies of any supporting documents shall be addressed and mailed to the State Board of Equalization at Sacramento California. Upon receipt of the appeal, the board shall provide one copy of the appeal and one copy of any supporting documents to the Franchise Tax Board at Sacramento, California.
(Added by Stats.1993, c. 31 (S.B.3), § 26, eff. June 16, 1993, operative Jan. 1, 1994.)

APPENDIX E(2)(a)

19047. Appeal; hearing and determination; notice
The board shall hear and determine the appeal and thereafter shall forthwith notify the taxpayer and the Franchise Tax Board of its determination and the reasons therefor.
(Added bv Stats.1993, c. 31 (S.B.3), § 26, eff. June 16, 1993, operative Jan. 1, 1994.)

19048. Appeal; finality; rehearing
The board's determination becomes final upon the expiration of 30 days from the time of the determination unless within the 30-day period the taxpayer or the Franchise Tax Board files a petition for rehearing with the board. In that event the determination becomes final upon the expiration of 30 davs from the time the board issues its opinion on the petition.
(Added by Stats.1993, c. 31 (S.B.3), § 26, eff. June 16, 1993, operative Jan. 1, 1994.)

19049. Notice and demand for payment; due date
When a deficiency is determined and the assessment becomes final, the Franchise Tax Board shall mail notice and demand to the taxpayer for the payment thereof. The deficiency assessed is due and payable at the expiration of 10 days from the date of the notice and demand.
(Added by Stats.1993, c. 31 (S.B.3), § 26, eff. June 16, 1993, operative Jan. 1, 1994.)

[1] West's Annotated Codes, Calif. Rev & Taxation , Sec. 17071 to 23000, Vol. 61, West Publishing Co. St. Paul, Minn.,1994.

APPENDIX E(3)
UNITED STATES CONSTITUTION
AMENDMENT 5

Criminal actions- Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CALIFORNIA STATE CONSTITUTION, ARTICLE 1:

SECTION 7. Due process and equal protection; pupil school assignment or transportation; privileges and immunities

Sec. 7. (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution

Sec 7. (b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked.

(Added Nov. 4, 1974. Amended Nov. 6, 1979.)

APPENDIX E(4)

DEFINITION OF "PRACTICABLE"

Practicable: To do; To work; Capable of being effected or performed; feasible; capable of serving a use or purpose; useable,useful.[1]

Capable of being put into practice or accomplished; feasible; as a practicable method.[2]

Practicable is that which may be done, practiced, or accomplished; that which is performed, feasible possible; and the adverb practicably means in a practicable manner. Within liability policy providing that when an accident occurred, written notice should be given by or on behalf of insured to insurer or any of its authorized agents as soon as practicable, "practicable" was held to mean feasible in the circumstances. Frey v. Security Ins. Co. of Hartford, D. C. Pa. 331 F. Supp. 140,143.[3]

Capable of being done, feasible, a practicable experiment, capable of being used, a practicable route.[4]

That may be done or effected; feasible; passable.[5]

That can be done or put into practice, feasible, plan, that can be used; usable, practicable tool, SYN. Possible, practical, for a purpose.[6]

1. The Living Webster Encycolpedic Dictionary of the English Language, English Language Institute of America, Chicago, 1975, Page 747.
2. Webster's Collegiate Dictionary, Houghton & Co. 5th ed. 1947, Page 778.
3. Black's Law Dictionary, West Publishing Co., St. Paul Minn. 6th edition, 1990, Page 1172.
4. The New Lexicon Webster Dictionary, Lexicon Publications, Inc. New York, 1989, Page787.
5. Large Print New Webster's Dictionary, Paradise Press, Inc., 1994 edition, Page202.
6. Webster's New World College Dictionary, MacMillan, U.S.A.,Revised & Updated 3rd Edition, 1996, Page 1058.

APPENDIX E(5)

Word "practicable" means capable of being put into practice or accomplished. State ex rel. Fast & /co. v. Industrial Commission, 198 N.E. 2d 666, 667, 176 Ohio St.199.[7]

"Practicable" means capable of being performed or effected. Des Moines Independent Community School Dist. v. Armstrong, 95 N.W. 2d 515,517, 250 Iowa 634.[7]

The meaning of "practicable" depends on context, but ordinarily means that which may be practice or performed; capable of being put into practice, done, or accomplished. Holyfield v. State, 63 S.W. 2d 386, 124 Tex.Cr.R. 422.[7]

"Practicable" to park automobile does not mean merely "convenient". Sanders v. H.P. Welch Co.,26 A.2d 34,39, 92 N.H. 74.[7]

"Practicable" within statute forbidding parking on improved portion of highway when it is "practicable" to park off such portion is not synonymous with "convenient". Legere v.Tatro 52 N.E.2d 11,14, 315 Mass. 141.[7]

"Necessary" used as synonym for "practicable". Hunton v. California Portland Cement Co. 123 P2d 947,953, 50 C.A.2d 684.[7]

"Reasonably possible" would mean substantially the same as "Practicable". Woody v. South Carolina Power Co., 24 S.E. 2d 121, 124, 202 S.C. 73.[7]

Word "practicable" means capable of being put into practice, done or accomplished, feasible. Freshman v. Stallings, D.C.N.C., 128 F. Supp. 179,181.[7]

An act is "practicable" if conditions and circumstances are such as to permit its performance or render it feasible. Mastorgi v. Valley View Farms, 83 A 2d 919,921, 138 Conn. 313.[7]

"Practicable" means capable of being put into practice, done or accomplished, or feasible. Unverzagt v. Prestera, 13 A.2d 46,48, 339 Pa. 141.[7]

"Practicable" mans feasible, fair, and convenient and is not synonymous with "possible". In re Kenilworth Bldg. Corp., C.C.A. Ill., 105 F 2d 673, 676.[7]

[7]. Words and Phrases, West Publishing co., St. Paul, Minn., Volume 33, Poll to Presence, within State, 1658 to date, Pages 249 through 252

APPENDIX E(5)(a)

"Practicable" means capable of being performed or effected. Walbridge v. Brooklyn Trust Co., 128 N.Y.S.,686,690, 143 App. Div. 502.[8]

Term "practicable" as used in the requirement that an insured give notice as soon as practicable not only means reasonable, but has the additional connotation of what might be termed common or "horse" sense; being practicable about a matter means eliminating the purely formal or useless facts that serve no real or valid purpose. Transamerica Ins. Co. v Parrott, Tenn. App., 531 S. W. 2d 306, 312.[9]

Within liability policy providing that when accident occurred, written notice should be given by or on behalf of insured to insurer or any of its authorized agents as soon as practicable "practicable" meant feasible in the circumstances. Frey v. Security Ins. Co. of Hartford, D. C. Pa., 331 F. Supp. 140,143.[9]

THE ABOVE IS JUST A SAMPLE OF THE DEFINITIONS OF PRACTICABLE FOUND IN "WORDS AND PHRASES"[8,9]

[8]Words and Phrases, West Publishing co., St. Paul, Minn., Volume 33, Poll to Presence, within State, 1658 to date, Pages 252 through 254.

[9] Words and Phrases, Volume 33, Pocket part, 1994, Pages 52, 53.

APPENDIX E(6)
DOCTRINE OF LACHES

California Civil Code, Section 3527, Vigilance and delay, The law helps the vigilant, before those who sleep on their rights.

Equity frowns upon stale demands and declines to aid those who have slept upon their rights, Latta v. Western Inv. Co., C.A. 9(Cal) 1949, 173 F.2d 99.[1]

"Laches" is unreasonable delay in asserting right which causes such prejudice to adverse party as renders granting of relief inequitable. Marshall v. Marshall(1965) 42 Cal Rptr. 686, 232 Cal. App.2d 232; Long v. Long (1946) 76 Cal app.2d 716, 173 P.2d 840; Heitt v. Inland Finance Corp. (1930) 210 Cal. 293, 291 P. 414.[1]

To establish laches, defense was obligated to show unreasonable delay in bringing action by plaintiffs as well as either acquiescence in defendant's conduct or PREDJUDICE Asia Inv. Co. Ltd. V. Borowski (App 3 Dist. 1981) 184 Cal Rptr. 317, 133 Cal App.3d 832.[1]

Generally, in order to prevail on defense of laches, a party must establish existence of inexcusable delay in bringing an action and resultant prejudice to the defense. Ponce v. Graceous Nav., Inc. (App. 2 Dist.1981) 179 Cal. Rptr. 164, 126 Cal. App. 3d 823.[1]

"Laches" is such neglect or omission to assert a right as, taken in conjunction with lapse of time, more or less great, and other circumstances causing prejudice to adverse party operates as bar in court of equity. Gallaher v. Iowa Oil co. (App.1934) 139 Cal App. 100, 33 P. 2d 439.[1]

Delay of almost two and one-half years after grantee had been fully informed of alleged defect in deed, during which time one of grantors died, was laches, barring action for reformation. Goodfellow v. Barritt (App. 4 Dist. 1933) 130 Cal App. 548, 20 P. 2d 740.[1]

While only prejudicial delay will constitute laches, yet prejudice may be presumed, where the interests of innocent third persons might be affected by the delay, which in such cases claimant must satisfactorily explain or excuse. McNeil v. McNeil, 1909, 170 F. 289, 95 C.C.A. 485.[1]

THESE ARE JUST A SAMPLE OF CASES RELATED TO THE DOCTRINE OF LACHES AS A DEFENSE.[1]

[1] West's Annotated Code, volume , Civil Law, 1999, Pages 139 through 141.

APPENDIX E(7)

DOCTRINE OF LACES(Continued)

When one party's delay operates to the injury of another party, defense of laches may be successfully invoked, even though lapse of time is less than applicable period of limitations; laches exists independently of relevant statute of limitations. In Re Marriage of Plescia (App. 4 Dist. 1997) 69 Cal. Rptr. 2d 120, 59 Cal. App. 4th 252.[2]

Nothing more than mere passage of time is required for statute of limitations to bar action at law, but mere passage of time alone will never constitute proper defense of laches; rather, for laches to apply, passage of time must be unreasonable, and it must have caused prejudice to other party. In re Marriage of Plescia(App. 4 Dist 1997) 69 Cal. Rptr. 2d 120, 59 Cal. App. 4th 252.[2]

CALIFORNIA CIVIL CODE SECTION 3513-WAIVER

Requirements of law or ordinance enacted for public reasons may not be waived by an official or a governmental body. Terry v. Bender (App. 1956) 143 Cal. App.2d 198, 300 P.2d 119.[3]

For purpose of this section, a law has been established for a public "reason" only if it has been enacted for protection of public generally, that is, if its tendency is to promote welfare of general public rather than small percentage of citizens. Benane V International Harvester Co. (Super. 1956) 142 Cal. App. 2d Supp. 874, 299 P. 2d 750.[3]

Governmental body may not waive requirements of ordinance enacted for public benefit. Strong v. Santa Cruz County (1975) 125 Cal. Rptr. 896, 15 Cal. 3d 720, 543 P.2d 264. [3]

[2]. West Annotated California Codes, Civil Code Sections 3479 to End, West Group, St. Paul, Minn. 1997. 1999 Pocket Part, page 5.

[3] Calif. Annot. Civil Code, Sect. 3513, West Pub. Co., St. Paul, Minn. 1997, Pages 95, 96, and 99.

APPENDIX F

4664 West Hammond
Fresno, California, 93722
December 6,1997

Honorable Robert E. Coyle
Senior U. S. District Judge
United States District Court,Eastern Div.
1130 "O." Street
Fresno,California,93721-2201

RE: Eugene C. Azamber
Dist Court No.
CV.97-5291 OWW

Dear Judge Coyle:

I am in receipt of your letter of December 4, 1997 in response to my request that you not reassign my case from Judge Wanger. I thank you for taking the time to answer my letter and I am sorry that you feel that you cannot grant my request. I am naturally bound by your decision.

I feel that I gave good and sufficient reasons as to why this case should not be reassigned and therefore; let the court record and the record of this case show that an objection was made to this reassignment.

Thank you again for responding to my letter.

Sincerely,

/s/ Eugene C. Azamber
Eugene C. Azamber

APPENDIX F(1)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
5116 U.S. COURTHOUSE
I 130 O STREET
FRESNO, CA 93721

CHAMBERS of
ROBERT E. COYLE
SENIOR JUDGE

December 4, 1997

Eugene C. Azamber
4664 West Hammond
Fresno. CA 93722

Re: CV-97-529 1 OWW

Dear Mr. Azamber:

In response to yours of November 24 in the above matter, this case was assigned to Judoe Ishii on a random selection of cases from both Judge Wanger and myself to give Judge Ishii an equal number of cases. The court finds no reason to make a reassignment.

Very truly yours,

/s/ Robert E. Coyle
ROBERT E. COYLE, Senior Judge
Eastern District of California

REC :mos

APPENDIX F(2)

4664 West Hammond
Fresno, California, 93722
November 24,1997

Honorable Robert E. Coyle
Senior U. S. District Judge
United States District Court, Eastern Div.
1130 "O." Street
Fresno,California,93721-2201

RE: Eugene C. Azamber
Dist. Court Case No.
CV.97-5291 OWW

Dear Judge Coyle:

I am in receipt of your notice of November 6,1997 regarding the transfer of my case from Judge O. W. Wagner to Judge Anthony W. Ishii. I am sorry for the delay in writing to you but after much thought and deliberation, I felt that the only proper thing to do was to write and to ask you to reconsider and not transfer my case away from Judge Wagner.

In view of the nature, issues and complexity of this case, I feel that a Judge with the knowledge and experience, such as Judge Wagner possesses, is necessary to do justice to this appeal. Only an experienced Judge will not be afraid to make a decision that may be adverse to a Governmental agency. I feel that Judge Wagner has this capability.

If you have to transfer the case and cannot leave it with Judge Wagner, then could you transfer the case to Judge E. D. Price, also a very experienced Judge with your court.

I hope that you will be able to grant my request and I thank you for your kindness and cooperation.
Sincerely,

/s/ Eugene C. Azamber
Eugene C. Azamber

APPENDIX F(3)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

CASE NO. CV. 97 - 5291 OWW

ORDER OF REASSIGNMENT

The Court, having considered the recent appointment of United States District Judge Anthony W. Ishii to the Eastern District Bench, finds the necessity for reassignment of the attached list of cases, and for notice be given to the affected parties.

IT IS THEREFORE ORDERED that the attached list of cases are hereby reassigned to U.S. District Judge Anthony W. Ishii for all further proceedings.

DATED: November 6 , 1997

/s/ Robert E. Coyle
ROBERT E. COYLE
Senior U.S. District Judge

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